

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JOSE DAVID VALDEZ BALDENEGRO,

Plaintiff,

Civ. No. 11-3038-CL

v.

ORDER

MICHAEL NAYLOR; DON CONVERSE;
JOE FERGUSON; and JACKSON
COUNTY JUVENILE SERVICES,

Defendants.

PANNER, District Judge:

Magistrate Judge Mark D. Clarke filed a Report and Recommendation (#24), and the matter is now before me. See 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72(b). Plaintiff and defendants filed objections. Accordingly, I have reviewed the file of this case *de novo*. See 28 U.S.C. § 636(b)(1)(c); McDonnell

Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). I conclude the R & R is correct.

Defendants now argue that plaintiffs claims are barred by the Supreme Court's decision in Heck v. Humphrey, 512 U.S. 477 (1994). Defendants only raised the Heck argument in the reply in support of the motion to dismiss. Plaintiff did not brief the issue prior to Judge Clarke's report, and only minimally briefed the issue in his response to defendants' objections. As the dismissal is without prejudice, defendants may choose to present the Heck argument to Judge Clarke at a later time, when Judge Clarke will have the benefit of full briefing on the issue.

CONCLUSION

I adopt Magistrate Judge Clarke's Report and Recommendation (#24). As stated in the Report and Recommendation, defendants' motion for judgment on the pleadings (#11) is granted in part and denied in part. Plaintiff is granted 20 days to amend his claims against defendants Converse, Ferguson, and Jackson County Juvenile Services.

IT IS SO ORDERED.

DATED this 23 day of January, 2012.

A handwritten signature in black ink, appearing to read "Owen M. Panner", is written over a horizontal line.

OWEN M. PANNER
U.S. DISTRICT JUDGE